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WILLIAM HAMMAN

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(Hon. Barry Ted Moskowitz)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM HAMMAN,

Defendant.

CASE NO. 08CR0440-BTM

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTIONS**

I.

MOTION TO COMPEL DISCOVERY

The government has indicated they will be providing discovery, but as of this date, counsel has not received discovery. WILLIAM HAMMAN moves for the production by the government of the following items. This request is not limited to those items that the prosecutor knows of, but rather includes all discovery listed below that is in the custody, control, care, or knowledge of any "closely related investigative [or other] agencies" under United States v. Bryan, 868 F.2d 1032 (9th Cir.), cert. denied, 493 U.S. 858 (1989):

(1) The Defendant's Statements Under Fed. R. Crim. P. 16 (a)(1)(A) the defendant is entitled to disclosure all copies of any written or recorded statements made by the defendant; the substance of any statements made by the defendant which the government intends to offer in evidence at trial; any recorded testimony of the defendant before the grand jury; any response by the defendant to interrogation; the substance of any oral statements

1 which the government intends to introduce at trial, and any written summaries of the
 2 defendant's oral statements contained in the handwritten notes of the government agent; any
 3 response to any Miranda warnings which may have been given to the defendant (see United
 4 States v. McElroy, 697 F.2d 459 (2d Cir. 1982)); and any other statements by the defendant
 5 that are discoverable under Fed. R. Crim. P. 16(a)(1)(A). The Advisory Committee Notes
 6 as well as the 1991 amendments to Rule 16 make it clear that the Government must reveal
 7 all the defendant's statements, whether oral or written regardless of whether the Government
 8 intends to introduce those statements;

9 (2) Arrest Reports, Notes and Dispatch Tapes The defendant also specifically requests
 10 that all arrest reports, notes and dispatch or any other tapes that relate to the circumstances
 11 surrounding his arrest or any questioning, if such reports have not already been produced in
 12 their entirety, be turned over to him. This request includes, but is not limited to, any rough
 13 notes, records, reports, transcripts or other documents in which statements of the defendant
 14 or any other discoverable material is contained. This is all discoverable under Fed. R. Crim.
 15 P. 16(a)(1)(A) and Brady v. Maryland, 373 U.S. 83 (1963). See also United States v.
 16 Johnson, 525 F.2d 999 (2d Cir. 1975), cert. denied, 424 U.S. 920 (1976); United States v.
 17 Lewis, 511 F.2d 798 (D.C. Cir. 1975); United States v. Pilnick, 267 F. Supp. 791 (S.D.N.Y.
 18 1967); Loux v. United States, 389 F.2d 911 (9th Cir.), cert. denied, 393 U.S. 867 (1968).
 19 Arrest reports, investigator's notes, memos from arresting officers, dispatch tapes, sworn
 20 statements, and prosecution reports pertaining to the defendant are available under Fed. R.
 21 Crim. P. 16(a)(1)(B) and (c), Fed. R. Crim. P. 26.2 and 12(I);

22 (3) Reports of Scientific Tests or Examinations Pursuant to Fed. R. Crim. P. 16(D),
 23 Mr. HAMMAN requests the reports of all tests and examinations conducted upon the
 24 evidence in this case, and any fingerprint testing done upon any evidence seized in this case,
 25 that is within the possession, custody, or control of the government, the existence of which
 26 is known, or by the exercise of due diligence may become known, to the attorney for the
 27 government, and which are material to the preparation of the defense or are intended for use
 28 by the government as evidence in chief at the trial;

1 (4) Brady Material The defendant requests all documents, statements, agents' reports,
2 and tangible evidence favorable to the defendant on the issue of guilt and/or which affects
3 the credibility of the government's case. Impeachment as well as exculpatory evidence falls
4 within Brady's definition of evidence favorable to the accused. United States v. Bagley, 473
5 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97 (1976);

6 (5) Any Information that May Result in a Lower Sentence under the United States
7 Sentencing Guidelines (U.S.S.G.) As discussed above, this information is discoverable under
8 Brady v. Maryland, 373 U.S. 83 (1963). This request includes any cooperation or attempted
9 cooperation by the defendant, as well as any information that could affect any base offense
10 level or specific offense characteristic under Chapter Two of the U.S.S.G. Also included in
11 this request is any information relevant to a Chapter Three adjustment, a determination of the
12 defendant's criminal history, or any other application of the U.S.S.G.;

13 (6) The Defendant's Prior Record Evidence of prior record is available under Fed. R.
14 Crim. P. 16(a)(1)(B);

15 (7) Any Proposed 404(b) Evidence Evidence of prior similar acts is discoverable
16 under Fed. R. Crim. P. 16(a)(1)(c) and Fed. R. Evid. 404(b) and 609. In addition, under Fed.
17 R. Evid. 404(b), "upon request of the accused, the prosecution . . . shall provide reasonable
18 notice in advance of trial . . . of the general nature . . ." of any evidence the government
19 proposes to introduce under Fed. R. Evid. 404(b) at trial. The defendant requests that such
20 notice be given three weeks before trial in order to give the defense time to adequately
21 investigate and prepare for trial;

22 (8) Evidence Seized Evidence seized as a result of any search, either warrantless or
23 with a warrant, is discoverable under Fed. R. Crim. P. 16(a)(1)(c);

24 (9) Request for Preservation of Evidence The defendant specifically requests that all
25 dispatch tapes or any other physical evidence that may be destroyed, lost, or otherwise put
26 out of the possession, custody, or care of the government and which relate to the arrest or the
27 events leading to the arrest in this case be preserved. This request includes, but is not limited
28 to, any samples used to run any scientific tests, any narcotics, and any evidence seized from

any third party. It is requested that the government be ordered to question all the agencies and individuals involved in the prosecution and investigation of this case to determine if such evidence exists, and if it does exist, to inform those parties to preserve any such evidence;

(10) Tangible Objects The defendant requests, under Fed. R. Crim. P. 16(a)(2)(c), the opportunity to inspect and copy as well as test, if necessary, all other documents and tangible objects, including photographs, books, papers, documents, photographs, of building or places or copies of portions thereof which are material to the defense or intended for use in the government's case-in-chief, or were obtained from or belong to the defendant;

(11) Evidence of Bias or Motive to Lie The defendant requests any evidence that any prospective government witness is biased or prejudiced against the defendant, or has a motive to falsify or distort his or her testimony. Pennsylvania v. Ritchie, 480 U.S. 39 (1987); United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988), cert. denied, 489 U.S. 1032 (1989);

(12) Impeachment Evidence The defendant requests any evidence that any prospective government witness has engaged in any criminal act, whether or not resulting in a conviction, and whether any witness has made a statement favorable to the defendant. See Fed. R. Evid. 608, 609 and 613. Such evidence is discoverable under Brady v. Maryland, 373 U.S. 83 (1963). See United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988) (witness' prior record); Thomas v. United States, 343 F.2d 49 (9th Cir. 1965) (evidence that detracts from a witness' credibility);

(13) Evidence of Criminal Investigation of Any Government Witness The defendant requests any evidence that any prospective witness is under investigation by federal, state or local authorities for any criminal conduct. United States v. Chitty, 760 F.2d 425 (2d Cir.), cert. denied, 474 U.S. 945 (1985);

(14) Evidence Affecting Perception, Recollection, Ability to Communicate, or Truth Telling The defense requests any evidence, including any medical or psychiatric report or evaluation, tending to show that any prospective witness' ability to perceive, remember, communicate, or tell the truth is impaired; and any evidence that a witness has ever used narcotics or other controlled substance, or has ever been an alcoholic. United States v.

1 Strifler, 851 F.2d 1197 (9th Cir. 1988); Chavis v. North Carolina, 637 F.2d 213, 224 (4th Cir.
2 1980);

3 (15) Witness Addresses The defendant requests the name and last known address of
4 each prospective government witness. See United States v. Napue, 834 F.2d 1311 (7th Cir.
5 1987); United States v. Tucker, 716 F.2d 576 (9th Cir. 1983) (failure to interview
6 government witnesses by counsel is ineffective); United States v. Cook, 608 F.2d 1175, 1181
7 (9th Cir. 1979) (defense has equal right to talk to witnesses), cert. denied, 444 U.S. 1034
8 (1980). The defendant also requests the name and last known address of every witness to the
9 crime or crimes charged (or any of the overt acts committed in furtherance thereof) who will
10 not be called as a government witness. United States v. Cadet, 727 F.2d 1453 (9th Cir.
11 1984);

12 (16) Name of Witnesses Favorable to the Defendant The defendant requests the name
13 of any witness who made an arguably favorable statement concerning the defendant or who
14 could not identify him or who was unsure of his identity, or participation in the crime
15 charged. Jackson v. Wainwright, 390 F.2d 288 (5th Cir. 1968); Chavis v. North Carolina,
16 637 F.2d 213, 223 (4th Cir. 1980); Jones v. Jago, 575 F.2d 1164, 1168 (6th Cir.), cert.
17 denied, 439 U.S. 883 (1978); Hudson v. Blackburn, 601 F.2d 785 (5th Cir. 1979), cert.
18 denied, 444 U.S. 1086 (1980);

19 (17) Statements Relevant to the Defense The defendant requests disclosure of any
20 statement that may be "relevant to any possible defense or contention" that he might assert.
21 United States v. Bailleaux, 685 F.2d 1105 (9th Cir. 1982);

22 (18) Jencks Act Material The defense requests all material to which defendant is
23 entitled pursuant to the Jencks Act, 18 U.S.C. § 3500, reasonably in advance of trial,
24 including dispatch tapes. A verbal acknowledgment that "rough" notes constitute an accurate
25 account of the witness' interview is sufficient for the report or notes to qualify as a statement
26 under §3500(e)(1). Campbell v. United States, 373 U.S. 487, 490-92 (1963). In United States
27 v. Boshell, 952 F.2d 1101 (9th Cir. 1991), the Ninth Circuit held that when an agent goes
28 over interview notes with the subject of the interview the notes are then subject to the Jencks

1 Act. The defense requests pre-trial production of Jencks material to expedite cross-
2 examination and to avoid lengthy recesses during trial;

3 (19) Giglio Information Pursuant to Giglio v. United States, 405 U.S. 150 (1972), the
4 defendant requests all statements and/or promises, express or implied, made to any
5 government witnesses, in exchange for their testimony in this case, and all other information
6 which could arguably be used for the impeachment of any government witnesses;

7 (20) Personnel Records of Government Officers Involved in the Arrest The defendant
8 requests all citizen complaints and other related internal affairs documents involving any of
9 the immigration officers or other law enforcement officers who were involved in the
10 investigation, arrest and interrogation of him, pursuant to Pitchess v. Superior Court, 11 Cal.
11 3d 531, 539 (1974). Because of the sensitive nature of these documents, defense counsel will
12 not be able to procure them from any other source;

13 (21) Government Examination of Law Enforcement Personnel Files Mr. HAMMAN
14 requests that the government examine the personnel files and any other files within its
15 custody, care or control, or which could be obtained by the government, for all testifying
16 witnesses, including testifying officers. Mr. HAMMAN requests that these files be reviewed
17 by the government attorney for evidence of perjurious conduct or other like dishonesty, or
18 any other material relevant to impeachment, or any information that is exculpatory, pursuant
19 to its duty under United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991). The obligation to
20 examine files arises by virtue of the defense making a demand for their review: the Ninth
21 Circuit in Henthorn remanded for in camera review of the agents' files because the
22 government failed to examine the files of agents who testified at trial. This Court should
23 therefore order the government to review all such files for all testifying witnesses and turn
24 over any material relevant to impeachment or that is exculpatory to Mr. HAMMAN prior to
25 trial. Mr. HAMMAN specifically requests that the prosecutor, not the law enforcement
26 officers, review the files in this case. The duty to review the files, under Henthorn, should
27 be the prosecutor's and not the officers'. Only the prosecutor has the legal knowledge and
28 ethical obligations to fully comply with this request.

1 II.

2 **LEAVE TO FILE FURTHER MOTIONS**

3 Mr. HAMMAN requests the court grant him leave to file further motions after he has
4 the opportunity to review further discovery.

5 **CONCLUSION**

6 For the foregoing reasons, WILLIAM HAMMAN, respectfully requests this Court
7 grant these motions.

8 Respectfully submitted,

9 Dated: March 6, 2008

10 s/Frank J. Ragen
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